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***Via Electronic Mail Delivery***

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***Re: Written Ex Parte Communication***  
***Status of Number Portability Implementation***  
***CC Docket No. 95-116***

Gentlemen:

In follow-up to its meeting with the Commission last week,<sup>1</sup> Sprint Corporation submits this *ex parte* letter to request Commission guidance regarding how it should proceed with respect to the hundreds of local exchange carriers ("LECs") and dozens of wireless carriers that still refuse to provide Sprint the basic information it needs to implement customer port-in requests for carriers required to provide local number portability ("LNP") on May 24, 2004 – information the FCC has already ruled these carriers must provide. Sprint also asks the Commission to assist state public utility commissions by issuing guidance concerning proper analysis under 47 U.S.C. § 251(f)(2).

**I. BACKGROUND FACTS**

LECs have been on notice for years that they must provide number portability to wireless carriers within six months of receiving a bona fide request ("BFR").<sup>2</sup> For example, the Commission's LNP rule applicable to LECs specifically provides:

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<sup>1</sup> See Sprint *Ex Parte* Letter, CC Docket No. 95-116 (May 6, 2004).

<sup>2</sup> See *First LNP Order*, 11 FCC Rcd 8352, 8357 ¶ 8 (1996).

[A]ny licensed CMRS provider must be permitted to make a request for deployment of number portability in that state.<sup>3</sup>

One year ago, Sprint PCS sent BFRs to over 90 wireless carriers and over 500 LECs, asking that LNP be made available on November, 24, 2003.<sup>4</sup> The overwhelming majority of these carriers ignored Sprint's BFRs.

Last July and August 2003, Sprint PCS sent to these carriers its Trading Partner Profile ("TPP") form, which contains the minimum information needed to effectuate a port request.<sup>5</sup> Sprint completed its TPP information in the package it sent to carriers, so they could honor requests from Sprint PCS customers wanting to port their number to them. Sprint asked that carriers reciprocate by completing their TPP information, so Sprint PCS could honor port-in requests from their customers. After most carriers ignored its TPP requests, Sprint sought the Commission's assistance so the porting process could finally begin.<sup>6</sup>

The Commission addressed this matter in both its *Wireless* and *Intermodal Porting Orders*. In its *Wireless Porting Order*, the FCC held that "carriers need only share basic contact and technical information sufficient to perform the port."<sup>7</sup> The Commission specifically recognized that "Sprint's profile information exchange process is an example of the type of contact and technical information that would trigger an obligation to port."<sup>8</sup> The FCC reached the same result in its *Intermodal Porting Order* released the next month:

We agree with Sprint that wireline carriers should be required to port numbers to wireless carriers without necessarily entering into an interconnection agreement because this obligation can be discharged with a minimal exchange of information.<sup>9</sup>

The Commission again ruled:

Sprint's profile information exchange process is an example of the type of contact and technical information that would trigger an obligation to port.<sup>10</sup>

The Commission's actions at the time helped facilitate the exchange of information between carriers necessary to effectuate porting on November 24, 2003. Now, Sprint again asks that the

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<sup>3</sup> 47 C.F.R. § 52.23(b)(2)(i).

<sup>4</sup> Sprint PCS sent these BFRs before May 24, 2003 so the recipient would have at least six months to begin providing number portability. See 47 C.F.R. § 52.23(c); *Fourth LNP Order*, 18 FCC Rcd 12472, 12475 n.17 (June 18, 2003).

<sup>5</sup> For a copy of this form, see Appendix E to the Sprint Ex Parte Letter, CC Docket No. 95-116 (Aug. 8, 2003).

<sup>6</sup> See, e.g., Sprint Ex Parte Letter, CC Docket No. 95-116 (Aug. 8, 2003); Sprint Ex Parte Letter, CC Docket No. 95-116 (Sept. 23, 2003).

<sup>7</sup> *Wireless Porting Order*, 18 FCC Rcd 20971 at ¶ 24 (Oct. 7, 2003).

<sup>8</sup> *Id.* at n.40.

<sup>9</sup> *Intermodal Porting Order*, 18 FCC Rcd 23697 at ¶ 34 (Nov. 10, 2003).

<sup>10</sup> *Id.* at n.90.

Commission take actions to ensure carrier cooperation and exchange of information for the upcoming May 24, 2004 LNP implementation deadline.

In its *Intermodal Porting Order*, the Commission waived its LNP rules for LECs serving areas outside the top 100 MSAs by giving them an additional six months – until May 24, 2004 – to provide number portability to wireless carriers.<sup>11</sup> It later extended the same relief to smaller carriers serving areas within the top 100 MSAs.<sup>12</sup>

Beginning in February 2004, Sprint PCS again sent TPP forms to those carriers that had not completed the forms sent last summer. Sprint asked that the information be provided by March 26, 2004 in anticipation of a May 24, 2004 start date for number portability. In addition, Sprint has also systematically contacted many carriers urging prompt completion of TPP. It has also established a web site that carriers may use to obtain information on porting with Sprint, *see* [www.sprintpcs.com/carrierwlnp](http://www.sprintpcs.com/carrierwlnp).

As demonstrated below, however, the majority of carriers have again ignored this latest request for porting information notwithstanding the Commission's unequivocal rulings in the *Wireless* and *Intermodal Porting Orders*. In short, Sprint's "self help" efforts have been largely ineffective with certain carriers; as a result, Sprint seeks Commission assistance to ensure implementation of LNP by these carriers, so that their customers may enjoy the benefits of intermodal competition.

## **II. CUSTOMERS OF MOST CARRIERS WILL NOT ON MAY 24, 2004 HAVE THE OPPORTUNITY TO PORT TO SPRINT PCS**

To confirm, Sprint cannot honor a customer's port-in request if the customer's current carrier (*i.e.*, the porting-out carrier) does not provide Sprint with the basic information requested in the Trading Partner Profile ("TPP") form. The receipt of completed TPP forms is thus a good indicator, or metric, in which to evaluate the status of LNP implementation. And again, the Commission itself has already recognized the need for this exchange of intercarrier information in its orders. However, as the table below demonstrates, Sprint has not received completed TPP forms from most carriers:

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<sup>11</sup> See *id.* at ¶ 29.

<sup>12</sup> See *Two Percent/Top 100 MSA LEC Waiver Order*, 19 FCC Rcd 875 (Jan. 16, 2004).

**Sprint PCS: LNP Status**  
(data as of May 10, 2004)<sup>13</sup>

	Carriers <u>Sent BFRs/TPPs</u>	TPPs <u>Received</u>	TPP Response <u>Rate Percent</u>
Wireless (Tier 1 & 2)	10	10	100%
Wireless (Tier 3)	96	62	65%
RBOCs+Sprint	5	5	100%
Other Large LECs (over 100K lines)	8	8	100%
Smaller LECs (under 100K lines)	626	117	19%
Total:	745	202	27%

Many carriers have simply ignored Sprint's latest TPP form, just as they ignored the BFRs and TPPs that Sprint sent last year.<sup>14</sup> And while some LECs have responded to Sprint's requests, many have refused to share their information, raising a variety of objections that the FCC has already rejected. For example,

- One rural LEC claims that Sprint's TPP form does "not constitute a valid request" because the form does not "specifically request portability." This LEC makes this argument even though the FCC has twice ruled that Sprint's TPP form "is an example of the type of contact and technical information that would trigger an obligation to port." Additionally, Sprint's BFRs clearly meet the three elements that the Commission has found necessary to constitute a valid request for LNP implementation.<sup>15</sup>
- Another rural LEC claims that the FCC's prior rulings are not binding on it:  
That the FCC, in the abstract, regards Sprint PCS's Trading Partner Profile as reasonable is not an FCC determination that every person and every entity which receives Sprint PCS's "Trading Partner Profile" is required by law to respond to it.

<sup>13</sup> Sprint advises the Commission of notable TPP progress in the last week, particularly with respect to Wireless Tier 3 carriers. Cf. Sprint Ex Parte Letter, CC Docket No. 95-116 (May 6, 2004).

<sup>14</sup> Hundreds of RLECs have filed Section 251(f)(2) petitions with state public utility commissions, which may explain why some carriers have ignored Sprint's requests for TPP information.

<sup>15</sup> Requesting telecommunications carriers must [1] specifically request portability, [2] identify the discrete geographic area covered by the request, and [3] provide a tentative date by which the carrier expects to utilize number portability to port prospective customers. *Fourth LNP Order*, CC Docket No. 95-116, FCC 03-126, at ¶ 10 (June 18, 2003). The BFRs that Sprint PCS submitted to carriers satisfied all three conditions. Sprint's BFRs specifically requested LNP; they identified the discrete geographic areas covered by identifying the LEC end office switches it wished be made LNP capable; and they asked LECs to provide LNP effective November 24, 2003.

- Another rural LEC advised Sprint on March 11, 2004 (or 10 weeks before it is required to begin providing LNP) that it is “not comfortable completing the requested Trading Partner Profile until it has a better understanding of what is being requested and a better level of knowledge with which to respond.”
- Yet another rural LEC refuses to implement portability until Sprint identifies “how [it] intends to compensate us for transporting originating calls to an interconnection point outside our service area.” This LEC makes this argument even though the FCC has twice ruled that direct interconnection is not a condition precedent to the availability of LNP and that “this dispute over transport costs does not, however, provide a reason to delay or limit the availability of porting.”<sup>16</sup>

### **III. SPRINT SEEKS GUIDANCE OVER HOW IT SHOULD PROCEED WITH RESPECT TO THE CARRIERS THAT CONTINUE TO IGNORE ITS REQUEST TO EXCHANGE NECESSARY PORTING INFORMATION**

There are over 500 carriers that still refuse to share with Sprint the information it needs to honor port-in requests from customers of these carriers – even though the FCC has twice ruled that carriers should respond to the “minimal” information that Sprint has requested.<sup>17</sup> The Commission has noted that non-compliance with the LNP rules could be addressed “in the context of Section 208 formal compliant proceedings or related mediations.”<sup>18</sup>

Sprint could file individual complaints, but such a procedure would tax both the Commission’s and Sprint’s resources. As importantly, such adjudicative proceedings are not an ideal procedure to address a common situation involving hundreds of carriers. Indeed, arguments could be made that recalcitrant carriers would benefit by the delays associated with the Section 208 complaint process, to the extent their apparent strategy is to delay as long as possible the date that their customers will enjoy new competitive options.

Sprint therefore asks for Commission guidance over the procedures that can be used to address this industry-wide problem in an expeditious and cost-effective manner. One approach – and there are others – would be for the Commission to issue a public notice directing all carriers to complete Sprint and other requesting carriers’ TPP forms with all due deliberate speed, based on its rulings in both the *Wireless* and *Intermodal Porting Orders*. If the Commission adopted this approach, Sprint would be willing to report to the Commission at a specified time (*e.g.*, 45 days after an order) regarding status and would identify the specific carriers that have still not provided basic porting (TPP) information. The Commission could then decide whether enforcement action is appropriate.

There may be other available procedures. Sprint submits that the Commission’s objective should be to find a cost-effective procedure regarding the exchange of necessary porting information so that LEC customers can enjoy the competitive benefits of LNP promised to them,

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<sup>16</sup> See *Intermodal Porting Order* at n. 75.

<sup>17</sup> *Id.* at ¶ 34.

<sup>18</sup> See *id.* at n. 76.

formation so that LEC customers can enjoy the competitive benefits of LNP promised to them, and required by law.

#### IV. THE COMMISSION SHOULD PROVIDE GUIDANCE TO STATE COMMISSIONS GRAPPLING WITH SECTION 251(f)(2) PETITIONS

Hundreds of small LECs have petitioned their state commission for relief under Section 251(f)(2) of the Communications Act to be relieved of their obligation to provide number portability under Section 251(b)(5) of the Act.<sup>19</sup> As a result, Sprint and other carriers will not be able to port numbers with a great number of these LECs beginning May 24, 2004. The net result is that, while customers of large LECs may be able to port their numbers, customers of many small LECs (arguably the market most in need of competition through wireless LNP) will continue to be on the outside looking in.

As an intervenor in numerous state proceedings, Sprint has witnessed a fair amount of misinformation, if not collateral attacks, concerning the FCC's LNP Orders. For example, petitioners continue to paint Sprint and other wireless carriers' LNP requests as requests for location portability. Many petitioners also seek suspension until the Commission's full and final disposition of issues associated with porting intervals and the routing of calls between wireline and wireless customers. In short, petitioners are putting forth arguments that have been settled by the Commission, or are otherwise inappropriate for state commission consideration.

Given that LNP is a federal mandate – a creation of Congress and the Federal Communications Commission – Sprint asks the Commission to assist state commissions by offering guidance concerning the proper analysis under Section 251(f)(2) criteria.<sup>20</sup>

- Avoid a Significant Adverse Economic Impact on Customers.<sup>21</sup> The FCC has adopted an LNP cost recovery program for incumbent LECs, and under this program, monthly LNP surcharges must be “levelized” – that is, the surcharge must be set so it

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<sup>19</sup> See, e.g., COMMUNICATIONS DAILY, *Requests for State Relief on Intermodal Porting Watched Closely* (April 5, 2004); STATE TELEPHONE REGULATION REPORT, *Telco Pleas for State Relief from Intermodal Number Porting Watched Closely* (April 9, 2004).

<sup>20</sup> Sprint commends the Commission for its May 6, 2004 letter sent by K. Dane Snowden, Chief, Consumer & Government Affairs Bureau, to Stan Wise, President, National Association of Regulatory Utility Commissioners, urging state commissions to “remain mindful of the tremendous customer benefits that porting generates,” and encouraging them “to hold carriers that seek waivers of their porting obligations to the appropriate standard of review.” The Commission further appropriately encourages state commissions “to ensure that carriers . . . are on a path to compliance so that customer of these carriers will not be forever denied the rights their fellow consumers enjoy. If relief were to be granted in the absence of extraordinary circumstances, or for indefinite periods, it would be a setback for rural customers.” Sprint agrees with these views.

<sup>21</sup> See 47 U.S.C. § 251(f)(2)(A)(i).

“remain[s] constant over [the five-year] recovery period.”<sup>22</sup> The FCC “require[d] levelization of the monthly charge to protect consumers from varying rates.”<sup>23</sup>

For example the Washington Commission staff has computed the federal LNP surcharge that rural LECs would assess using the FCC’s methodology (e.g., five year amortization period, 11.25% cost of capital). This Staff has computed that a RLEC with a per line cost of \$5 would impose a monthly surcharge of \$0.10, while a RLEC with a per line cost of \$10 would impose a monthly surcharge of \$0.21.<sup>24</sup>

In this regard, Sprint acknowledges that there may be a small percentage of ILECs for which LNP may be cost prohibitive given the size of their customer base. The waiver process is designed specifically to handle these unique situations. Sprint suggests, however, that the FCC consider extending the five-year cost recovery period in these circumstances to mitigate the financial impact on telephone subscribers while ensuring the ubiquity of number portability.<sup>25</sup>

- Avoid a Requirement that is Unduly Economically Burdensome.<sup>26</sup> Again, the FCC has already developed “an exclusively federal recovery mechanism for long-term number portability” that is designed to enable LECs to recover their LNP costs for “both interstate and intrastate calls.”<sup>27</sup> Due to the availability of cost recovery, the implementation of LNP should not be unduly economically burdensome to the vast bulk of carriers.
- Avoid a Requirement that is Technically Infeasible.<sup>28</sup> The FCC has already recognized that there is no evidence that LNP presents any “significant technical difficulties.”<sup>29</sup> Indeed, several “2%” LECs are already providing LNP to Sprint PCS – conclusively demonstrating that LNP is technically feasible for small carriers. Moreover,

<sup>22</sup> See 47 C.F.R. § 52.33(a)(1)(iv) and *Third LNP Order*, 13 FCC Rcd 11701, 11777 n.478 (1998).

<sup>23</sup> *Third LNP Order*, 13 FCC Rcd at 11777 ¶ 143. See also *Third LNP Reconsideration Order*, 17 FCC Rcd 2578, 2624-25 ¶¶ 92-93 (2002).

<sup>24</sup> See Washington Staff Memorandum for October 29, 2003 Open Meeting, Docket No. UT-031535, Attachment C.

<sup>25</sup> Sprint notes that the Commission recently waived the five-year recovery period for ILECs that did not recover costs related to intermodal LNP during the original five-year recovery period. *In the Matter of Telephone Number Portability, BellSouth Corporation Petition for Declaratory Ruling and/or Waiver*, CC Docket No. 95-116, Order, ¶ 1 (April 13, 2004). Sprint believes this Order exhibits a willingness of the Commission to be flexible concerning cost recovery periods, where appropriate.

<sup>26</sup> See 47 U.S.C. § 251(f)(2)(A)(ii).

<sup>27</sup> *Third LNP Order*, 13 FCC Rcd 11701, 11706 ¶ 8, 11719-20 ¶¶ 28-29 (1998). Under this “exclusively federal number portability cost recovery mechanism, incumbent LECs’ number portability costs will not be subject to jurisdictional separations.” *Id.* at 11720 ¶ 29. See also *Third LNP Reconsideration Order*, 17 FCC Rcd 2578, 2585 ¶ 12 (2002) (“[W]e affirm our decision in the *Third Report and Order* that we have exclusive jurisdiction over the distribution and recovery of both intrastate and interstate costs of implementing long-term number portability.”); 47 C.F.R. § 52.33(a).

<sup>28</sup> See 47 U.S.C. § 251(f)(2)(A)(iii).

<sup>29</sup> See *Intermodal Porting Order* at ¶ 23.

Sprint PCS has successfully ported numbers with a “2% LEC” with whom Sprint is not directly connected and does not have numbers in the LEC rate center. Sprint’s local division has also successfully ported numbers with wireless carriers in these same circumstances.

Additionally, so long as the wireless carrier retains the number’s original rate center designation following the port, rating, routing, and transport concerns (raised repeatedly by state petitioners) are inappropriate for state commission consideration.<sup>30</sup>

- Suspension is Consistent with the Public Interest, Convenience and Necessity.<sup>31</sup> The FCC has ruled that LNP facilitates the public interest because it “promote[s] competition between wireless and wireline carriers.”<sup>32</sup> Remembering that the “focus of the porting rules is on promoting competition, rather than protecting individual competitors,”<sup>33</sup> rural LECs cannot credibly claim that the public interest is served by a continued delay in giving their customers new competitive choices. Congress and the Commission have already performed a cost-benefit analysis and determined that LNP is in the interest of the public. State commissions should not substitute their judgment regarding the overall public good and benefits to be derived from LNP under the circumstances.<sup>34</sup>

Moreover, the suspension of LNP would harm the public interest. If rural LECs are relieved of their obligation to provide LNP, they will also be relieved of having to participate in number pooling.<sup>35</sup> Nationwide, the number utilization rate for all telecommunications carriers is 39.2 percent.<sup>36</sup> The average utilization rate for wireless carriers is 47.8 percent.<sup>37</sup> In contrast, the average utilization rate of rural LECs is 18.1 percent.<sup>38</sup> Hence, granting of LNP suspensions by state commission would relieve many rural LECs of their responsibility to participate in number pooling and the telephone numbers they do not use will continue to be stranded for the duration of any suspension a state commission grants.

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<sup>30</sup> *Id.* at ¶ 28, and *see id.* at n. 75.

<sup>31</sup> *See* 47 U.S.C. § 251(f)(2)(B).

<sup>32</sup> *Intermodal Porting Order* at ¶ 9.

<sup>33</sup> *Id.* at ¶ 27.

<sup>34</sup> Again, Sprint recognizes that there are a small percentage of carriers for whom the costs of LNP are prohibitive and where the resulting cost recovery would be overly burdensome when spread over a small subscriber base, but only in these circumstances could a state commission find that the “public interest, convenience and necessity” demands suspension of LNP under 251(f)(2).

<sup>35</sup> The FCC adopted a plan “exempt[ing] rural telephone companies . . . that have not received a request to provide LNP from the pooling requirement.” *Fourth Numbering Resource Optimization Order*, CC Docket No. 99-200, FCC 03-126, at ¶¶ 1 and 18 (June 18, 2003).

<sup>36</sup> *See* FCC Industry Analysis and Technology Division, *Numbering Resource Utilization in the United States as of December 31, 2002*, Table 1 (July 2003).

<sup>37</sup> *See id.*

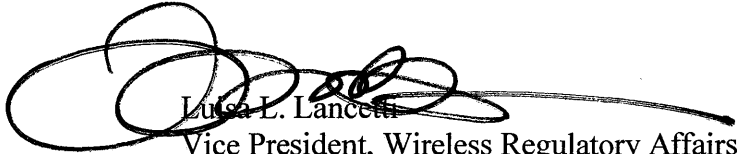
<sup>38</sup> *See id.*, Table 3.

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For the reasons discussed herein, Sprint requests that the Commission provide additional guidance regarding this issue to state public utility commissions as they consider the requests of carriers who have sought to delay the implementation of LNP via Section 251(f)(2) petitions. Sprint also requests Commission assistance to ensure all carriers to exchange basic information to implement porting, as required by law.

Pursuant to Section 1.1206(b) of the Commission's rules, Sprint Corporation is filing one copy of this letter with the Secretary's office for filing in CC Docket No. 95-115.

Respectfully submitted,



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